IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4885 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AMBALAL ICHHABHAI VALAND & 2 - Petitioner(s)
Versus
BAI KANKU WD/O ASHABHAI MOHANBHAI & 1 - Respondent(s)

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Appearance :
MR JITENDRA M PATEL for Petitioner(s) : 1 - 3.
None for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 21/09/2005

ORAL JUDGMENT

1.By way of this petition under Article 227 of the Constitution of India, the petitioners – heirs of the original landlord have challenged the legality and

validity of the judgment and order passed by the Gujarat Revenue Tribunal dated 28th January, 1987 passed in Revision Application No. TEN/BA/34/84 in dismissing the same and confirming the judgment and order passed by the Deputy Collector, Vadodara dated 27th November, 1983 passed in Tenancy Appeal No.70/82 as well as the order passed by the Mamlatdar & ALT, Padra dated 25th February, 1980 in allowing the application submitted by the original tenant – Ashabhai Mohanbhai Padhiar submitted under Section 32(1)(B) of the Bombay Tenancy Act and declaring him to be the tenant of the land in question.

2. The dispute is with regard to the land bearing Survey No.139/2 admeasuring 1 Acre and 10 Gunthas of land situated at village : Bhoj, Taluka Padra, District Vadodara. It appears that one Ashabhai Mohanbhai Padhiar claiming to be the tenant of the land in question submitted an application under Section 32(PPP) of the Bombay Tenancy Act. However, the said application came to be dismissed by the Mamlatdar & ALT by order dated 5th March, 1981 and the Mamlatdar & ALT observed while deciding the said application that the inquiry should be started to find out whether the case

can be conducted under Section 32(1)(B) of the Act or not and thereafter, the said Ashabhai Mohanbhai Padhiar, claiming to be the tenant submitted an application dated 18th December, 1981 to the Mamlatdar & ALT under Section 32(1)(B) of the Act to declare him as a tenant and the Mamlatdar & ALT after issuance of the notices to the parties and after recording the evidence, decided by its order dated 25th February, 1986 that the said Ashabhai Mohanbhai Padhiar was a tenant of the land on 15th June, 1955 and that his possession was taken over unauthorizedly by the landlord and therefore, the possession should be restored to the original tenant under Section 32(1)(B) of the Act and thereafter the purchase price should be fixed under Section 32(G) of the Act. It appears from the record that the father of the petitioners – original landlord filed appeal before the Deputy Collector, Vadodara and the Deputy Collector, Vadodara decided the matter on 27th November, 1983 and dismissed the said appeal against which the petitioners as heirs of the original landlord have preferred the present Special Civil Application under Article 227 of the Constitution of India.

3.The main contention on behalf of the petitioners is that the application submitted by the original tenant under Section 32(PPP) of the Act was barred by limitation. It is also submitted that they have contended before the tribunal that the order of the Mamlatdar & ALT under Section 32(1)(B) of the Act giving directions to start proceedings under Section 32(1)(B) of the Act was illegal and without jurisdiction and therefore, on the basis of such directions, the original tenant could not have been declared as the tenant of the land under section 32(1)(B) of the Act and therefore, it is requested to allow the present Special Civil Application.

4.It is required to be noted that while deciding the application under Section 32(PPP) of the Act and while dismissing the said application, the Mamlatdar & ALT held and/or observed that the inquiry should be started to find out whether the case can be conducted under Section 32(1)(B) of the Act or not and the said order has not been challenged by the original landlord and/or the petitioners and therefore, the same has become final and therefore, it is not open for the petitioners at this stage to contend that the initial directions

issued by the Mamlatdar & ALT to initiate the proceedings under Section 32(1)(B) of the Act while dismissing the application under Section (PPP) of the Act was without jurisdiction. Even otherwise, the original tenant submitted an independent application under Section 32(1)(B) of the Act and the Gujarat Revenue Tribunal while relying upon the judgment of this Court in case of ***Rasumiya V/s. Lalbhai*** reported in **24(1) GLR P-714** has held that as the Mamlatdar & ALT is also having the suo-motu jurisdiction and that Bombay Tenancy Act is a very benevolent Act to protect the rights of the tenant and once the Mamlatdar & ALT entertains the application and decides the same on merits, the same can be said to be exercising the suo-motu powers. The relevant observation of this Court in case of ***Rasumiya V/s. Lalbhai*** reported in **24(1) GLR P-714**, reads as under:-

> *"In the present case also the Mamlatdar has been advisably entrusted with suo motu power by the legislature, to entertain any appropriate case under Section 32(1)(B) even if the aggrieved tenant might not have applied within time for redressal of his grievance. It is pertinent to note that Section 32(1)(B) is a beneficial provision enacted with a view to protect the rights of illiterate and ignorant*

tenants who might have been duped by their crafty landlords into giving up possession of their lands contrary to the provisions of the Tenancy Act. Such tenants might skip the period of one year's limitation as provided by the statutory rules. However, they are given a locum paenitentiae in the form of invocation of suo motu powers of Mamlatdar for getting justice. Their time barred applications seek to do nothing else but to inform the Mamlatdar about the injustice done to them. Once convinced of the justness of the grievance put forward by such a tenant, if the Mamlatdar proceeds to deal with the case under Section 32(1)(B) on merits, only inference that can follow form such a course adopted by the Mamlatdar is that he has thought it fit to invoke his suo motu powers which are not subject to any period of limitation."

5.On appreciation of evidence, all the three authorities below i.e. Mamlatdar & ALT, Deputy Collector as well as the Gujarat Revenue Tribunal have concurrently found and declared Ashabhai Mohanbhai Padhiar as the tenanat and have decided to restore the possession of the land in question to the original tenant and now his heirs, and the said findings are on appreciation of the evidence, which are not required to be reappreciated by this Court while exercising the powers under Article

227 of the Constitution of India. Even otherwise, considering the judgment of this Court in case of **Rasulmiya (Supra)** the contention on behalf of the petitioners that the application under Section 32(1)(B)of the Bombay Tenancy Act was time barred and the same was not required to be entertained, has no substance. This is a petition under Article 227 of the Constitution of India. There is no jurisdictional error, much less an error of law, committed by any of the authorities below, which calls for the interference of this Court exercising powers under Article 227 of the Constitution of India.

6. For the reasons stated above, the petition fails. Rule discharged. Ad-interim relief granted earlier stands vacated forthwith. However, there will be no order as to costs.

(M.R.SHAH, J.)

kdc.